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7 Attorney for CAPITAL FARMS, INC.,
Debtor in Possession

9 UNITED STATES BANKRUPTCY COURT

10 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

11 In re:

12 CAPITAL FARMS, INC.,

13 Debtor and Debtor-in-Possession.

Case No. 25-10074-A-12

Chapter 12

D.C. No. FW-5

Date: March 6, 2025

Time: 10:30 a.m.

Place: Dept. A, Courtroom 11, 5th Floor
United States Courthouse
2500 Tulare St., Fresno, California

Judge: Hon. Jennifer E. Niemann

18 **DEBTOR'S MOTION FOR ORDER AUTHORIZING EMPLOYMENT OF CHIEF**
19 **RESTRUCTURING OFFICER PURSUANT TO 11 U.S.C. §363(b)**

20 CAPITAL FARMS, INC., Debtor and Debtor in Possession herein ("Debtor"), hereby
21 submits the Motion for Order Authorizing Employment of Chief Restructuring Officer
22 Pursuant to 11 U.S.C. §363(b) ("Application"). In support of the same, Debtor respectively
23 represents the following:
24

1 1. This case was commenced by the filing of a Voluntary Petition for relief under
2 Chapter 12 of the United States Bankruptcy Code on January 10, 2025. Lilian G. Tsang has
3 been appointed as the Chapter 12 trustee in the case.

4 2. In negotiations with Debtor's secured lenders ("Lenders"), the Lenders have
5 indicated that they believe the oversight of a third party Chief Restructuring Officer would be
6 helpful to ensure that all secured creditors are adequately protected for Debtor's use of cash
7 collateral. To that end, Debtor has agreed with Rabo to hire Scott Sackett as Chief
8 Restructuring Officer ("CRO") in this case. The duties of the CRO will include the following:

- 9 a. Assist Debtor in preparing its budgets, forecasts, Monthly Operating Reports, and
10 variance reports.
- 11 b. Have access to all of the bank accounts of Debtor, and review and approve in
12 advance all checks, wires, or cash withdrawals.
- 13 c. Review and analyze all existing agreements with the Crop Processors, and
14 determine whether any such agreements should be modified or new agreements
15 entered into.
- 16 d. Periodically review the Debtor's expenditures throughout each month to ascertain
17 that they conform with the Budget, and submit a verification with each Monthly
18 Operating Report that the expenditures for the past month did or did not conform
19 with the Budget.
- 20 e. Within two weeks of retention, report to the Lenders as to certain items details in a
21 cash collateral stipulation.
- 22 f. Within sixty (60) calendar days of retention, audit the amount of almonds generated
23 from the Debtor's ranches for 2023 and 2024, the proceeds and advances received,
24

1 and the use of the proceeds and advances, whether such almonds were delivered in
2 the name of the Debtor, United Farm LLC, or H & J Management.

3 g. Review all labor expenditure information including worker identity, hours worked,
4 wages, and overhead charges.

5 h. Review chemical application formulations, amounts, costs, and timing.

6 i. Review the chemical applications that took place in 2024 and prior to my
7 employment in 2025.

8 j. Provide on-site supervision of harvest operations, specifically including the loading
9 of trailers and the generation of field tickets and the review of all hauling and
10 hulling contracts and reports as well as all processor contracts.

11 k. Review any contracts for custom services.

12 l. Review all crop insurance policies, claims, and payouts.

13 m. Be available to Lenders from time to time to discuss inquiries from Lenders and
14 answer questions regarding Cash Collateral use, budgeting, expenses, Monthly
15 Operating Reports, variance reports, and forecasts.

16 3. Included herewith as Exhibit A is a proposed CRO employment agreement.

17 4. As noted in this agreement, Mr. Sackett has agreed to be compensated on an
18 hourly basis for his firm's work for the Debtor. Mr. Sackett's hourly rate is \$300 per hour. His
19 field agents have rates of \$175 per hour and administrative staff have rates of \$75 per hour. In
20 addition, he has requested an allowance of up to \$2,500 per month for legal costs. He has also
21 requested a \$10,000.00 retainer. As noted in the agreement, he will send the Debtor periodic
22 invoices for services rendered and charges and disbursements incurred. Upon transmittal of the
23 invoice, his firm may (at its option) immediately draw upon the retainer in the amount of the
24 invoice. Debtor agrees that invoices are due upon receipt, and will promptly pay the full invoice

1 amount and replenish the retainer. Subject to having available funds in the cash collateral
2 budget, Debtor has agreed to immediately replenish the retainer upon receipt of invoices from
3 Mr. Sackett's firm. I understand that Debtor will have to obtain court approval of payment of
4 such retainers as cash collateral. Mr. Sackett's fees and costs will ultimately be subject to
5 approval by the Bankruptcy Court and any disallowed fees and costs may be subject to
6 disgorgement.

7 POINTS AND AUTHORITIES

8 5. Bankruptcy Code § 363(b) provides, in part, that a debtor-in-possession "after
9 notice and hearing, may use, sell or lease, other than in the ordinary course of business,
10 property of the estate." In determining whether to authorize a debtor's proposed use of their
11 assets pursuant to Section 363(b) of the Bankruptcy Code, "courts require the debtor to show
12 that a sound business purpose justifies such actions." Myers v. Martin (In re Martin), 91 F.3d
13 389, 395 (3d Cir. 1996); In re Schipper, 933 F.2d 513, 515 (7th Cir. 1990); Stephens Indust.
14 Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); Comm. of Equity Sec. Holders v. Lionel
15 Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); see also In re Montgomery
16 Ward Holding Corp., 242 B.R. 147, 53 (Bankr. D. Del. 1999); In re Del. & Hudson Ry. Co.,
17 124 B.R. 169, 176 (D. Del. 1991). Moreover, Bankruptcy Code § 105(a) empowers the Court
18 to "issue any order, process, or judgment that is necessary to carry out the provisions of this
19 title."

20 6. The retention of an officer or consultant is proper under Bankruptcy Code §
21 363(b) as an appropriate exercise of a debtor's business judgment. Indeed, numerous courts
22 approved the retention of professionals to perform management services under Bankruptcy
23 Code § 363(b). See, e.g., In re Nine W. Holdings, Inc., 588 B.R. 678, 692 (Bankr. S.D.N.Y.
24 2018) (debtor was authorized to retain interim CEO under Section 363); In re Genever

1 Holdings, LLC, 2021 WL 2919826 (Bankr. S.D.N.Y. 2021) (grounds existed to approve
2 retention of officer similar to Chief Restructuring Officer under Section 363, even though it
3 was not approved due to legal counsel issue); In re California Independent Petroleum
4 Association, 2022 WL 162439 (Bankr. E.D. Cal. 2022) (debtor was authorized to retain
5 consultant under Section 363); In re In re Pilgrim's Pride Corp., 401 B.R. 229, 238 n. 16 (Bankr.
6 N.D. Tex. 2009); In re Copenhaver, Inc., 506 B.R. 757, 764-65 (Bankr. C.D. Ill. 2014); In re
7 Scoobeez, Case No. 19-14989 (Bankr. C.D. Cal. 2019); In re S.B. Restaurant Co., Case No.
8 14-13778 (Bankr. C.D. Cal. 2014); In re Westcliff Medical Laboratories, Inc., Case No. 10-
9 16743 (Bankr. C.D. Cal. 2010); In re Fatburger Restaurants of California, Inc., Case No. 09-
10 13965 (Bankr. C.D. Cal. 2011); see also In re Fairfield Residential LLC, Case No. 09-14378
11 (Bankr. D. Del. 2010); In re The Holliston Mill, Inc., Case No. 07-10687 (Bankr. D. Del. 2007).

12 7. In this case, Lenders have requested that Debtor hire Mr. Sackett to serve as
13 Chief Restructuring Officer to assist Debtor with the management of its farming operation.
14 Debtor has agreed to hire Mr. Sackett and request that the Court approve use of property of the
15 estate for that purpose. Concurrently, Debtor is seeking authorization to use cash collateral for
16 the purpose of retaining Mr. Sackett in this role.

17 WHEREFORE, Debtor prays for an order authorizing the employment of Scott Sackett
18 as Chief Restructuring Officer pursuant to 11 U.S.C. § 363(b), on the terms and for the
19 performance of the services herein above set out.

20 Date: February 24, 2025

FEAR WADDELL, P.C.

21 By: /s/ Peter L. Fear
22 PETER L. FEAR
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